

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

DANIEL JOSE GOMEZ,

Plaintiff,

vs.

CITY OF SIOUX FALLS; MINNEHAHA  
COUNTY; ROBIN HOUWMAN, JUDICIAL  
OFFICER AT MINNEHAHA COUNTY  
CIRCUIT COURT, INDIVIDUAL AND  
OFFICIAL CAPACITY; BRADLEY ZELL,  
JUDICIAL OFFICER AT MINNEHAHA  
COUNTY CIRCUIT COURT, INDIVIDUAL  
AND OFFICIAL CAPACITY,

Defendants.

4:22-CV-04147-RAL

ORDER GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO PROCEED IN  
FORMA PAUPERIS AND REQUIRING  
PLAINTIFF TO PAY AN INTIAL PARTIAL  
FILING FEE

Plaintiff Daniel Jose Gomez filed a pro se lawsuit under 42 U.S.C. § 1983, 28 U.S.C. § 1331, Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), and other federal statutes. Doc. 1. Gomez is an inmate at the Minnehaha County Jail. Id. at 1. He filed a motion for leave to proceed in forma pauperis and provided the Court with his prisoner trust account report. Docs. 3, 4.

Under the Prison Litigation Reform Act, a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The Court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment

plan.” Henderson v. Norris, 129 F.3d 481, 483 (8th Cir. 1997) (per curiam) (alteration in original) (quoting McGore v. Wigglesworth, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Gomez reports an average monthly balance for the past six months in his prisoner trust account of \$26.52 and an average monthly deposit of \$77.21. Doc. 4 at 1. Based on this information, the Court grants Gomez leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$15.44 (20 percent of his average monthly deposit). Gomez must pay the initial partial filing fee of **\$15.44 by November 28, 2022**. His failure to pay the filing fee by November 28, 2022, will result in the dismissal without prejudice of his complaint.

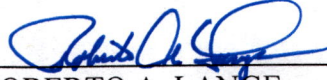
Accordingly, it is

ORDERED that Gomez's motion for leave to proceed in forma pauperis, Doc. 3, is granted. Gomez will make a payment of **\$15.44 by November 28, 2022**, made payable to the Clerk, U.S. District Court. If Gomez does not pay the initial partial filing fee by November 28, 2022, his complaint will be dismissed without prejudice. The Court will conduct a 28 U.S.C. § 1915A screening after Gomez pays his initial partial filing fee. It is finally

ORDERED that the institution having custody of Gomez is directed that whenever the amount in Gomez's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Gomez's trust account shall be forwarded to the U.S. District Court Clerk's Office under 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED October 28<sup>th</sup>, 2022.

BY THE COURT:



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ROBERTO A. LANGE  
CHIEF JUDGE